

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JF

TRACY S. SMITH,)	No. C 08-05672 JW-(PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
)	
SUBIA,)	
)	
Respondent.)	
)	(Docket No. 2)

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); *Babbitt v. Woodford*, 177 F.3d 744, 745-46 (9th Cir. 1999).

Order of Dismissal
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1 petition unless the petitioner received an order from the court of appeals authorizing
2 the district court to consider the petition. See 28 U.S.C. § 2244(b)(2).

3 Here, the instant petition challenges the same sentence as the previous
4 petition and Petitioner has not presented an order from the Ninth Circuit Court of
5 Appeals authorizing this Court to consider any new claims. Petitioner's first petition
6 was adjudicated on the merits in this Court's order denying the petition on August
7 17, 2000. Accordingly, this Court must dismiss the instant petition in its entirety.

8 The instant petition is DISMISSED as a second and successive petition
9 pursuant to § 2244 (b)(1).

10 The clerk shall terminate all pending motions as moot. (Docket No. 2).

11 IT IS SO ORDERED.

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13 DATED: 4/23/09 _____

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15 JEREMY FOGEL
16 United States District Judge
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